

## **SPECIAL USE PERMIT**

<b>FILE NO.</b>	<b>SP18-033</b>
<b>LOCATION OF PROPERTY</b>	<b>Northeast corner of Mitzi Drive and Ranchero Way (4146 Mitzi Drive)</b>
<b>ZONING DISTRICT</b>	<b>R-M Multiple Residence Zoning District</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Urban Residential</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to allow the removal of 17 ordinance-size trees, the relocation and conversion of a historic residence into a multi-family building with six units and the construction of an approximately 28,629- square foot four-story residential building with 40 units above a subterranean garage and an alternative parking arrangement (puzzle parking lift) on an approximately 0.63-gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Mitzi Place Apartments Initial Study/Mitigated Negative Declaration.</b>
<b>APPLICANT/OWNER</b>	<b>Farzin Shakib 146 Main Street Los Altos, CA 94024</b>

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Project Description.** The project consists of a Special Use Permit to allow the removal of 17 ordinance-size trees, the conversion of an historic residence into a multi-family building with six units and the construction of an approximately 28,629-square foot four-story residential building with 40 units above a subterranean garage and an alternative parking arrangement (puzzle parking lift) on an approximately 0.63-gross acre site. The driveway to the site would be relocated from the southern portion of the site along Mitzi Drive to the north to accommodate the ramp to the subterranean garage.

The existing Graves Residence, located on the property, was constructed between 1867 and 1868. The project includes the on-site relocation, rehabilitation and adaptive re-use of the Graves Residence to meet the Secretary of the Interior's Standards and Guidelines. The Graves Residence would be converted into a multi-family building consisting of six units. The house would be relocated approximately 35 feet southwest from its current location to the new site near the intersection of Mitzi Drive and Ranchero Way. The relocated building would also be rotated to the southwest.

2. **Site Description and Surrounding Uses.** The subject site is located on the northeast corner of Mitzi Drive and Ranchero Way. The project site is adjacent to multi-family residential apartment buildings to the north, south and east. The project site is adjacent to single-family residences across Mitzi Drive to the west. The existing Graves Residence is located at the center of the subject site.
3. **General Plan Conformance.** The proposed project is consistent with the General Plan Land Use/Transportation Diagram of the Envision San José 2040 General Plan designation of Urban Residential. The Urban Residential designation allows for medium density residential development and a fairly broad range of commercial uses, including retail, offices, hospitals, and private community gathering facilities, within identified Urban Villages, in other areas within the City that have existing residential development built at this density, within Specific Plan areas, or in areas in close proximity to an Urban Village or transit facility where intensification will support those facilities. The allowed density for residential projects with an Urban Residential Land Use Designation is between 30 to 95 Dwelling Units per Acre (DU/AC). The allowable Floor to Area Ratio (FAR) for projects with this Land Use Designation is 1.0 to 4.0 (3-12 stories). The project density would be approximately 85.44 DU/AC and would have an FAR of approximately 1.38. Therefore, the project would conform with the allowable density and FAR for a project with an Urban Residential Land Use Designation.

The project is consistent with the following General Plan goals and policies:

Connections Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

Land Use Policy LU-9.6: Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.

Land Use Policy LU-9.17: Limit residential development in established neighborhoods that are not identified growth areas to projects that conform to the site's Land Use/Transportation Diagram designation and meet Urban Design policies in this Plan.

Implementation Policy IP-1.3: Ensure that proposals for redevelopment or significant intensification of existing land uses on a property conform to the Land Use / Transportation Diagram.

*Analysis: The project consists of the construction of a four-story multi-family residential building. The project is subject to the development standards of the R-M Multiple Residence Zoning District. As described in further detail in the section below, the project conforms to the development standards of the zoning district. The project meets the use and density requirements of the Urban Residential Neighborhood land use designation. The multi-family residential building would be constructed in a neighborhood with a mix of multi-family and single-family residences. The project would redevelop a parcel of land to allow for the rehabilitation and on-site relocation of a historic residence while also increasing the residential density to allow for the construction of a multi-family residential building. The project is an infill development and would be served by all necessary private and public utilities and services. As discussed in the Design Guidelines section below, the project is subject to and conforms with the City's Residential Design Guidelines. The project provides adequate private open space in each of the units (60 sq.*

*ft) as well as approximately 10,878 square feet of common open space. As described in the Zoning Code section below, the project includes an alternative parking arrangement, with a puzzle like parking lift system, to accommodate the required number of vehicle parking spaces on-site.*

**Historic Preservation LU-13.2:** Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.

**Historic Preservation LU-13.13:** Foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance. Utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives.

*Analysis: The project would consist of the on-site relocation, rehabilitation, and adaptive re-use of the existing Graves Residence. The Graves Residence, located on the property, was constructed between 1867 and 1868. The project includes the on-site relocation, rehabilitation and adaptive re-use of the Graves Residence. As indicated in the Initial Study/Mitigated Negative Declaration, the historic resource would be rehabilitated to meet the Secretary of the Interior's Standards and Guidelines. The project would rehabilitate the decaying Graves Residence and allow for its adaptive re-use by converting it to a multi-family building consisting of six units. The house would be relocated approximately 35 feet southwest from its current location to the new site near the intersection of Mitzi Drive and Ranchero Way. The relocated building would also be rotated to the southwest.*

- 4. Zoning Code Compliance.** The subject site is located in the R-M Multiple Residence Zoning District. This district is reserved for the construction, use and occupancy of higher density residential development and higher density residential-commercial mixed-use development. Pursuant to Section 20.90.200A, a Special Use Permit is required for parking facilities which accommodate the required number of spaces in an alternative parking design. Multiple Dwelling developments are a permitted use in the R-M Zoning District. The project complies with all setback, height, parking, and performance standards for a project located in the R-M Zoning District.

#### Setbacks and Height

Development Standard	Required	Provided
Front setback	10 feet	10 feet
Side interior setback	5 feet	6 feet
Side corner setback	7.5 feet	7.5 feet
Rear, corner setback	15 feet	15 feet
Maximum height	45 feet	45 feet

Parking

	<b>Required</b>	<b>Provided</b>
Vehicle Parking	58	59
Bicycle Parking	12	12
Motorcycle Parking	12	12

Performance Standards

A noise and vibration assessment, dated March 20, 2020 was prepared by Illingworth & Rodkin, Inc. Based on the findings of the noise and vibration assessment, the project would not exceed the City's Municipal Zoning Code noise standards. Construction hours would be restricted to between 7:00 AM to 7:00 PM Monday through Friday. Furthermore, the project includes standard permit conditions for construction best management practices.

Tree Removals

The project includes the removal of 33 total trees. 17 trees to be removed are ordinance-size and 16 trees to be removed are non-ordinance size. All 33 trees would be removed pursuant to Section 13.32.100 of the Municipal Code as the location of the trees with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question. The removal of the 33 trees require a mitigation of 51 24-inch box trees to be planted on-site. The project includes 33 24-inch box trees to be planted on site. Therefore, the applicant is required to pay the off-site tree replacement fee for the remaining 18 trees. The off-site replacement trees are included as a condition of approval in this Special Use Permit.

**5. City Council Policy for the Preservation of Historic Landmarks**

The project conforms with the City Council Policy for the Preservation of Historic Landmarks. The historical evaluation that was prepared for the project concluded that the property is eligible for the California Register of Historical Resources and as a San José City Landmark. The project was discussed at the Historic Landmarks Commission Meeting under the early referral policy on October 3, 2018. An Initial Study/Mitigated Negative Declaration was prepared for the project. Analysis of the project found that the on-site relocation, rehabilitation, and adaptive re-use of the Grave Residence would conform with the Secretary of the Interior Standards. The four-story building and garage ramp would be stand-alone structures and would not physically affect the character defining features of the historic house. As a condition of approval, the applicant would provide a plaque on the historic residence describing the background of the Graves House and its significance to the history of San José due to its association with early agricultural development of the Santa Clara Valley and its distinctive Italianate architecture.

**6. Residential Design Guidelines**

The project is subject to and conforms with the City's Residential Design Guidelines. The Graves Residence would be relocated to the frontage along Mitzi Drive and would be oriented to the single-family neighborhood to the west. The four-story multi-family residential building would be at the easternmost portion of the site and would be adjacent to the multi-family residences to the south and east. The perimeter and interior of the site would be adequately landscaped with trees, plants, groundcover, pavers, and walkways. Street trees

would also be planted along Ranchero Way and Mitzi Drive in accordance with the requirements of the Department of Transportation and the City Arborist. The façade and roof provide articulation. The building includes a variety of materials and colors that are consistent with surrounding multi-family development. All rooftop equipment would be adequately screened from view by the rooftop parapet. The building entrance is clearly identifiable from the street and easily accessible for pedestrians. Each unit would have 60 square feet of private outdoor open space provided on the balcony. Additionally, the Residential Design Guidelines suggest approximately 100 square feet of open space per unit. As there are 46 units, approximately 4,600 square feet of common open space should be provided. The project would provide approximately 10,878 square feet of common open space. The common open space would be provided adjacent to the Graves Residence as well as on the landscaped rooftop deck area. Therefore, the project would conform with the Residential Design Guidelines.

- 7. Environmental Review.** An Initial Study and Mitigated Negative Declaration (IS/MND) entitled “Mitzi Place Apartments Project” was prepared by the Director of Planning, Building, and Code Enforcement for the subject Special Use Permit. The IS/MND was completed in compliance with the California Environmental Quality Act (CEQA) to reflect an independent judgment and analysis of the project.

The IS/MND identified potentially significant environmental impacts and determined that the proposed project would not have a significant effect on the environment with the incorporation of certain mitigation measures. The primary environmental issues addressed in the IS/MND were the potential impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, and noise and vibration. The MND includes mitigation measures for the previously stated resource areas that would reduce these potentially significant impacts to less than significant levels. The mitigation measures are included in this associated permit and in the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project.

The IS/MND was originally circulated for public review for a 20-day review period, from June 19, 2020, to July 8, 2020. Five comment letters were received for the subject project from two commenters. One comment letter was from the Preservation Action Council of San José and the other four comments were provided by a member of the public, Jennifer Griffin. Both commenters provided feedback regarding the historic analysis and historic Graves Building on-site. In summary, the comments did not raise any new issues regarding the project’s environmental analysis or provide information indicating the project would result in new environmental impacts or impacts greater than those disclosed in the IS/MND. The IS/MND, supporting technical documents, Response to Comments, and other related environmental documents are available on the Planning website at: <https://www.sanjoseca.gov/negativedeclarations/>.

- 8. Demolition Permit Findings.** Under the provisions of Section 20.80.460 of the San José Municipal Code, prior to the issuance of any development permit, which allows for the demolition, removal or relocation of a building, the following shall be considered to determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation:
- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;

- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: As previously discussed, the project would include the on-site relocation and rehabilitation of the historic resource. The approval of the Special Use Permit would increase the supply of housing in the City. The approval of the Special Use Permit would facilitate the relocation and rehabilitation of an historic resource (Graves Residence) as well as the construction of a multi-family residential building that would be compatible with the surrounding neighborhood and would conform with the General Plan Land Use Designation as well as all applicable provisions of the Municipal Zoning Code. The rehabilitation, and adaptive re-use of the Grave Residence would conform with the Secretary of the Interior Standards.*

**9. Special Use Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

*Analysis: As discussed above, the project includes an alternative parking arrangement, with a puzzle parking lift system, to accommodate the required number of vehicle parking spaces on-site. The project conforms with General Plan Policy CD-3.5 as it provides the required number of vehicle parking spaces in an alternative parking arrangement on-site. The project also provides the required number of bicycle and motorcycle parking spaces. The subject site is not located in a Specific Plan or Development Policy area.*

- b. The Special Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: The project conforms with all applicable parking requirements pursuant to Section 20.90 of the Municipal Zoning Code. The project requires 58 vehicle parking spaces, 12 bicycle parking spaces, and 12 motorcycle spaces. 59 vehicle parking spaces are provided in an alternative parking arrangement (puzzle parking lift) in a subterranean garage on-site. 12 bicycle parking spaces and 12 motorcycle parking spaces are also provided. See the findings for an alternative parking arrangement below.*

- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: The project is consistent with the Public Noticing and Public Outreach City Council Policies. On-site signs describing the proposed project were posted on the project site. The project has been noticed for public hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy.*

- d. The proposed use at the location requested will not:
  - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - iii. Be detrimental to public health, safety, or general welfare; and

*Analysis: As described above, the project consists of the relocation and rehabilitation of the existing Graves Residence as well as the construction of a four-story 40-unit multi-family residence. The project site is surrounded by multi-family apartment buildings to the north, east and south as well as single-family residences across Mitzi Drive to the west. The project would rehabilitate a decaying historical structure as well as provide much needed housing to the region. Therefore, the use would not negatively impact any surrounding properties or persons.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

*Analysis: The alternative parking arrangement would be accommodated in a subterranean garage that would be accessible from a driveway along Mitzi Drive. The garage would not be visible from adjacent properties. The project would include landscaping, pavers, walkways, and outdoor seating throughout the site.*

- f. The proposed site is adequately served:
  - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - ii. By other public or private service facilities as are required.

*Analysis: The subject site is served by Mitzi Drive and Ranchero Way, both fully paved public streets. The subterranean garage would be accessible from Mitzi Drive. The project also consists of street improvements including the construction of a 12-foot wide sidewalk along Ranchero Way, a 10-foot wide sidewalk along Mitzi Drive, and the widening of Ranchero Way to 60 feet. The site is located approximately 800 feet from the nearest VTA bus stop (Route 57). The site would be served by all necessary public and private utilities.*

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: As identified in the IS/MND the project would include a Mitigation Monitoring and Reporting Program (MMRP). The IS/MND and this Special Use Permit include standard permit conditions for the mitigation of the effects of noise, vibration, dust, drainage, erosion, storm water runoff, and odor as a result of the grading and construction. As previously stated, construction hours are limited to between 7:00 A.M and 7:00 P.M Monday through Friday.*

#### Findings for Alternative Parking Arrangement

In addition to any other findings required for a Special Use Permit, the Director, or Planning Commission on appeal, may approve such off-street parking facilities arrangements only upon making the following findings:

- h. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
- i. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
- j. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Analysis: The project includes an alternative parking arrangement, commonly referred to as a puzzle parking lift, located in the subterranean garage below the four-story residential building. As previously stated, the number of vehicle parking spaces required is 58 and the number of spaces provided is 59. Additionally, the project would provide the required 12 bicycle and 12 motorcycle parking spaces as required by the Municipal Zoning Code. The garage would be accessed from a driveway and ramp along Mitzi Drive at the northwestern end of the subject site. The puzzle parking lift would provide independent parking spaces for cars, one on top of the other and side by side. Parking spaces are accessed horizontally and are arranged on two different levels, one level on top of the other. The platforms of the upper floor are moved vertically, while the platforms on the ground floor are moved horizontally. At the ground floor level there is always one parking space less available. This vacant space is used for shifting the ground floor parking spaces sideways, enabling the upper floor parking spaces located above to be lowered to the ground floor level. With the alternative parking arrangement, the project would provide the required 58 vehicle parking spaces as well as the required number of bicycle and motorcycle parking spaces. The parking facility would be a permanent structure that would serve the residents of the Graves House and the multi-family residential building. The parking arrangement would be accessible from the interior of the multi-family residential building as well as an exterior stairwell nearest to the Graves Residence.*

#### **10. Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.

- a. The site development permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies. As described above, the project is consistent with the General Plan.

*Analysis: As discussed above, the project is consistent with the applicable General Plan Policies for Land Use, Implementation and Historic Preservation. The project consists of the construction of a multi-family residential building. The project meets the use and density requirements of the Urban Residential Neighborhood land use designation. The multi-family residential building would be constructed in a neighborhood with a mix of multi-family and single-family residences. The project is an infill development and would be served by all necessary private and public utilities and services. The project provides adequate private open space in each of the units (60 sq. ft) as well as approximately 10,878 square feet of common open space. The project also includes the on-site relocation, rehabilitation, and adaptive re-use of the Graves Residence. As indicated in the Initial Study/Mitigated Negative Declaration, the historic resource would be rehabilitated to meet the Secretary of the Interior's Standards and Guidelines. The project would rehabilitate the decaying Graves Residence and allow for its adaptive re-use by converting it to a multi-family building consisting of six units.*

- b. The site development permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed in the Zoning Code section above, the project complies with all setback and height requirements of the R-M Zoning District. The project includes the removal of 33 trees, which requires a mitigation of 51 24-inch box trees. 33 24-inch box trees would be planted on-site, while the remaining 18 trees required to be planted on-site would be mitigated through the payment of the off-site tree replacement fee.*

- c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The project conforms with the City Council Policy for the Preservation of Historic Landmarks. The historical evaluation that was prepared for the project concluded that the property is eligible for the California Register of Historical Resources and as a San José City Landmark. The project was discussed at the Historic Landmarks Commission Meeting under the early referral policy on October 3, 2018. An Initial Study/Mitigated Negative Declaration was prepared for the project. Analysis of the project found that the on-site relocation, rehabilitation, and adaptive re-use of the Grave Residence would conform with the Secretary of the Interior Standards. The four-story building and garage ramp would be stand-alone structures and would not physically affect the character defining features of the historic house. In addition to the rehabilitation of the house, the applicant shall provide a plaque on the historic residence describing the background of the Graves House and its significance to the history of San José due to its association with early agricultural development of the Santa Clara Valley and its distinctive Italianate architecture.*

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: As previously stated, the Graves Residence would be relocated approximately 35 feet southwest from its current location to the new site near the intersection of Mitzi Drive and Ranchero Way and re-oriented facing southwest. The new four-story multi-family residential building would have a maximum height of approximately 55 feet with mechanical projections and would be located at the easternmost portion of the site. The*

*space between the two buildings would consist of a mix of landscaping, pavers, walkways, and outdoor seating.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: The project site is surrounded by multi-family residential buildings to the north, south, and east as well as single-family houses to the west. The Graves Residence would be relocated approximately 35 feet southwest from its currently location to the new site near the intersection of Mitzi Drive and Ranchero Way and would be oriented towards the existing single-family houses. The new four-story multi-family residential building would be located at the easternmost portion of the site, nearest to the existing multi-family buildings to the east and north. The new building would have a maximum height of approximately 55 feet, with mechanical projections, and would be taller than the surrounding multi-family buildings in the immediate vicinity. However, the project would conform with all density, height, and setback requirements of the General Plan and Zoning Code.*

- f. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: The project includes landscaping modifications that comply with the City's Residential Design Guidelines. Adequate landscaping and screening are included with the project to conceal the buildings from adjacent properties as well as rooftop equipment. The area between the two buildings would include landscaping, pavers, walkways, and outdoor seating. As previously stated, the project would be served by all necessary public and private utilities and services.*

- g. Traffic access, pedestrian access and parking are adequate.

*Analysis: The subject site is served by Mitzi Drive and Ranchero Way, both fully paved public streets. The subterranean parking garage would be accessed from Mitzi Drive. The project also consists of street improvements including the construction of a 12-foot wide sidewalk along Ranchero Way, a 10-foot wide sidewalk along Mitzi Drive, and the widening of Ranchero Way to 60 feet. In addition to providing the required 59 vehicle parking spaces, the project would also create 10 new vehicle parking spaces along Ranchero Drive. The project would also provide 12 bicycle parking spaces and 12 motorcycle parking spaces.*

In accordance with the findings set forth above, a Special Use Permit and Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Use Authorization.** This Permit allows the removal of 17 ordinance-size trees, the relocation and conversion of a historic residence into a multi-family building with six units and the construction of an approximately 28,629-square foot four-story residential building with 40 units on an approximately 0.63-gross acre site.
4. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Mitzi Place" dated August 18, 2020, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
5. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
6. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
7. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
8. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.

9. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
10. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
11. **Off-Site Tree Replacement Fee.** Prior to issuance of a Public Works Grading permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) in accordance with the City Council approved Fee Resolution for the outstanding replacement trees not replaced on-site. The landscape plan indicates 18 trees would be required to be replaced with the off-site tree replacement fee. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
12. **Affordable Housing Requirements.** The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced IHO or AHIF, the permittee must execute and record their Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.
  - a. The IHO and AHIF Resolution each exempt certain developments from affordable housing obligations, if the development meets certain criteria. However, whether an exemption is claimed or not, the permittee must submit an Affordable Housing Compliance Plan Application, and the application processing fee to the Housing Department as part of the application for First Approval.
  - b. The Housing Department has reviewed and approved the Affordable Housing Compliance Plan for this project. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this project and any other applicable requirements of the IHO or AHIF.
  - c. If the project is subject to the AHIF, no building permit may issue until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
  - d. If the project is subject to the IHO, no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.
13. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84

shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

14. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
15. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
16. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
17. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
18. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
19. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
20. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
21. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.

22. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
23. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
24. **Generators.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
25. **Building and Property Maintenance.** The property owner shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

**26. Environmental Standard Permit Conditions**

**a. Air**

- i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- viii. A publicly visible sign shall be posted at the site with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**b. Biology**

- i. Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

Circumference	Type of Tree to be Removed	
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of Tree to be Removed	Native*	Non-Native	Orchard	Minimum Size Replacement Tree
38 inches or greater	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio  
 Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial and industrial properties, a permit is required for removal of trees of any size.  
 A 38-inch tree equals 12.1 inches in diameter.  
 A 24-inch box tree = two 15-gallon trees

In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
  - 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- ii. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at [www.scv-habitatplan.org](http://www.scv-habitatplan.org).
- c. **Cultural Standard Permit Conditions**
- i. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
  - ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as

amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- 1) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- 2) The MLD identified fails to make a recommendation; or
- 3) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

**d. Geology**

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account
- vi. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of

Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the PBCE.

**e. Hazards and Hazardous Materials**

- i. In conformance with state and local laws, a visual inspection/pre-renovation or demolition survey, and possible sampling, shall be conducted prior to the renovation of the on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During renovation and demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building renovation or demolition that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
- vii. Prior to commencement of renovation or demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
- viii. During renovation and demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
- ix. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

f. **Hydrology**

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
  - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
  - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
  - v. All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
  - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
  - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
  - viii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
  - ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- g. **Noise.** The project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but is not limited to, the following best management practices:
- i. Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
  - ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
  - iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - iv. Prohibit unnecessary idling of internal combustion engines.
  - v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary

- noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
  - ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
  - x. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

**27. Cultural Conditions of Approval.** The project applicant will incorporate the recommendations in the *Historic Sylvester & Kate Graves House/Existing Conditions & Preservation Plan* (Strata Design Studio, March 12, 2020), contained in Appendix C, to maintain the integrity of the historic structure during rehabilitation, relocation, and use. The applicant shall provide a plaque on the historic residence describing the background of the Graves House and its significance to the history of San José due to its association with early agricultural development of Santa Clara Valley and its distinctive Italianate architecture. A typical historic plaque is sized 4”x 6,” 8” x 12,” or 12” x 18.

**28. Noise and Vibration Environmental Condition of Approval.** A suitable form of forced-air mechanical ventilation, as determined by the City’s Building Official, shall be provided for all occupied areas of the proposed buildings with east and north fronting façades, so that windows can be kept closed to control noise.

## **29. Mitigation Measures**

- a. **Air Quality MM AQ-1.1:** Prior to the issuance of any demolition, grading or building permits (whichever occurs the earliest), the project applicant shall prepare a construction operations plan that demonstrates that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 95-percent reduction in diesel particulate matter (DPM) exhaust emissions or more. Specifically, this plan shall include, but is not limited to, the measures identified below:
  - i. All diesel-powered off-road equipment larger than 25 horsepower operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 4 engines with CARB-certified Level 3 Diesel Particulate Filters, or equivalent.
  - ii. Provide electric power to avoid use of diesel-powered generator sets and other portable equipment.

iii. Off-road equipment descriptions and information shall include, but are not limited to, equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number. Prior to the issuance of the any demolition, grading, or building permit (whichever comes first), the project applicant shall submit the construction operations plan and records of compliance to the Director of the Department of Planning, Building and Code Enforcement or the Director's designee.

- b. **Biology-MM BIO-1:** Prior to any site disturbance such as tree removal, or issuance of any grading, building or demolition permits (whichever occurs first), the project applicant shall schedule all construction activities to avoid the nesting season (February 1st to August 31st inclusive). The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

If the above-mentioned construction activities cannot be scheduled to occur between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no active nests shall be disturbed during construction activities. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the latter part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist/biologist shall inspect all trees and other possible nesting habitats on-site and within 250 feet of the site for nests.

If an active nest is found within 250 feet of the project area, to be disturbed by construction, the ornithologist/biologist shall determine the extent of a construction free buffer zone to be established around the nest (typically 250 feet for raptors and 100 feet for other birds) to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

Prior to any site disturbance, such as tree removal, or the issuance of any grading, building or demolition permits (whichever occurs first), the ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement or the Director's designee.

- c. **Cultural Resources. MM CR-1.1:** Prior to and during the relocation of the historic structure and during the construction of the underground garage, the project applicant shall implement the following measures to protect the Graves House from damage:
- i. Prepare relocation plans and specifications. Prior to relocation of the structure, a historic preservation architect and a structural engineer shall undertake an Existing Conditions study of the building. The purpose of the study shall be to establish the baseline conditions of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those physical characteristics of the resource that convey its historic significance and must be protected and preserved, and recommendations for any structural reinforcement, stabilization or protection before the move. The documentation shall be reviewed and

- approved by the City's Historic Preservation Officer (HPO) and the City's Director of PBCE or the Director's designee.
- ii. To protect the historic resource during its relocation, the project applicant shall engage a qualified building mover who has experience moving similar historic structures. Prior to its moving, the structural engineer who produced the baseline study shall review the moving plan and work with the moving company to ensure the building is reinforced/stabilized appropriately for the move. Measures to ensure the building is reinforced/stabilized include, but are not limited to the following:
- 1) Limit access to authorized personnel.
  - 2) Establish protective fencing and other measures to protect structure.
  - 3) Establish protective barriers to protect building from further construction activities.
  - 4) Store construction materials away from historic structure.
  - 5) Emphasize importance of preserving structure to construction crew.
  - 6) In the event of damage, the historic preservation architect/structural engineer shall prepare an assessment and recommend needed repairs.
  - 7) Once moved to its temporary location, the project applicant shall implement measures to prevent damage to the structure. These measures include, but are not limited to, the following:
    - a) Only authorized persons shall have access to the building. Protective fencing and other methods shall be used to protect the building from further damage and deterioration. If the historic preservation architect or structural engineer observe any new damage, an assessment shall be made of the severity of such damage and repairs undertaken if necessary. If the temporary location is on the construction site of the proposed project, protective barriers shall be constructed to further protect the building from potential damage by construction activities including the operation of construction equipment. Construction materials shall be stored away from the historic building. The project sponsor shall convey the importance of protecting the historic building to all construction workers and managers.
    - b) When the structure is moved to its final location, again the historic preservation architect or structural engineer will survey the building for any new damage. An assessment shall be made of the severity of such damage and repairs shall be undertaken if necessary. If new construction is still underway on the surrounding site, protective barriers shall be constructed to further protect the building from potential damage by construction activities and equipment. Construction materials shall be stored away from the historic building and the project sponsor shall convey the importance of protecting the historic building to all construction workers and managers.
- iii. Rehabilitate. Upon the final relocation the historic structure shall be repaired and rehabilitated in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be restored in a manner that preserves the integrity of the features. Upon completion of

- the rehabilitation, the City shall review and confirm that the rehabilitation of the structure was completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. A report documenting the completion of the relocation shall be submitted by the Historic Preservation Officer to the City's Historic Landmarks Commission, prior to the Certificate of Occupancy for the project.
- d. **Cultural Resources-MM CR-1.2** Construction-related Impacts. Prior to the issuance of any grading, relocation, or building permits, the project applicant shall implement the following measures to reduce construction related impacts to the historic structure:
- i. A historic preservation architect and a structural engineer shall prepare an existing conditions survey to establish the baseline condition of the historic building prior to construction, including the location and extent of any visible cracks or spalls.
    - 1) The documentation shall take the form of written descriptions and photographs, and shall include those physical characteristics of the resources that convey their historic significance and that justify their inclusion on, or eligibility for inclusion on, the California Register of Historical Resources and local register. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the issuance of any grading, relocation, or building permits.
    - 2) Any changes to existing conditions shall be reported, including, but not limited to, expansion of existing cracks, new spalls, or other exterior deterioration. Monitoring reports shall be submitted to the City's Historic Preservation Officer.
    - 3) The structural engineer shall consult with the historic preservation architect, especially if any problems with character defining features of a historic resource are discovered. If in the opinion of the structural engineer, in consultation with the historic preservation architect, substantial adverse impacts to historic resources related to construction activities are found during construction, the monitoring team shall so inform the project applicant, or project applicant's designated representative responsible for construction activities, as well as the City's Historic Preservation Officer. The project sponsor shall adhere to the monitoring team's recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger historic resources. The historic preservation officer, or equivalent, shall establish the frequency of monitoring and reporting. Site visit reports and documents associated with claims processing shall be provided to the City's Historic Preservation Officer.
  - ii. A qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential of vibrations caused by excavation and construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restriction and monitoring of specific construction activities shall be incorporated into the contract. Initial construction activities shall be monitored and if vibrations are above threshold levels, modifications shall be made to reduce vibrations to below established levels. A copy of the study, contract specifications, and monitoring reports shall be provided to the City's Historic Preservation Officer, or equivalent.

- iii. The historic preservation architect shall establish a training program for construction workers involved in the project that emphasizes the importance of protecting historic resources. This program shall include information on recognizing historic fabric and materials, and directions on how to exercise care when working around and operating equipment near the historic structures, including storage of materials away from historic buildings. It shall also include information on means to reduce vibrations from construction, and monitoring and reporting any potential problems that could affect the historic resources in the area. A provision for establishing this training program shall be incorporated into the contract, and the contract provisions shall be reviewed and approved by the City's Historic Preservation Officer.
- e. **Hazards and Hazardous Materials MM HAZ-1.1** Prior to issuance of any grading permits, the project applicant shall retain a qualified consultant to take shallow soil samples in the near surface soil to test for organochlorine pesticides and pesticide-based metals (arsenic and lead) to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and residential standard environmental screening levels. The results of the soil sampling testing shall be submitted to the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review. If contaminated soils are found in concentrations above the regulatory environmental screening levels for worker safety or residential standards a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified consultant. The plan shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of the future residents and visitors. The applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH) or Department of Toxic Substances Control (DTSC) under their Voluntary Clean Up Program. The SMP, RAP, or equivalent evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department prior to the issuance of grading permits.
- f. **Noise MM NSE-1:** The project applicant shall prepare and implement a construction vibration monitoring plan to document vibration generating construction activities and submit to the Director of Planning, Building and Code Enforcement or the Director's designee for review. The vibration plan shall address vibration impacts to sensitive historic structures of 0.08 in/sec PPV. All tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan shall include, but is not limited to, the following measures during construction:
  - i. Place operating equipment on the construction site as far as possible from vibration-sensitive receptors. The project contractor shall avoid using vibratory rollers, packers, and other heavy vibration-generating equipment within 30 feet of sensitive areas surrounding the site, whenever possible.

- ii. Use smaller equipment to minimize vibration levels below the limits.
  - iii. Modify/design or identify alternative construction methods to reduce vibration levels below the limits.
  - iv. Avoid dropping heavy objects or materials near property lines shared with sensitive receptors.
  - v. The contractor shall alert heavy equipment operators of the sensitive adjacent structures (i.e., structures within 30 feet of the construction activities) so they can exercise caution.
  - vi. Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
  - vii. The contractor shall retain a qualified firm to conduct a pre- and post-construction cosmetic crack survey of the buildings adjacent to the northern and western boundaries and shall repair or compensate where damage has occurred as a result of construction. The survey shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.
30. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit File No. SP18-033 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - d. *Other.* Such other requirements as may be specified by the Chief Building Official.
31. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.
32. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement

includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

- b. **Transportation:** The project's Traffic Analysis has been approved. See separate Traffic Memo date 03/05/2019 for additional information.

c. **Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.

d. **Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12-inches within the public right-of-way (i.e. soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties (299-16-045, 299-16-042) agreements between the Applicant and the adjacent property owners will need to be secured, executed, and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

- e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls, and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

- g. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- h. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- i. **Parks:** This residential property is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code).
- j. **Street Improvements:**
  - i. Construct curb, gutter, and sidewalk along the Ranchero Way project frontage with a 12' wide ADA compliant detached sidewalk section. This includes a 0.5' wide curb, 6.5' park strip, and 5' wide sidewalk. Provide a sidewalk transition from the 5' wide sidewalk to the easterly adjacent existing sidewalk along Ranchero Way. The sidewalk transition should occur after the property frontage. A street easement dedication to achieve a 60' street section along Ranchero Way project frontage will be required.
  - ii. Construct new curb, gutter and sidewalk along the Mitzi Drive project frontage with a 10' wide ADA compliant detached sidewalk section. This includes a 0.5' wide curb, 4.5' park strip, 5' wide sidewalk.
  - iii. Proposed Driveway width along Mitzi Drive project frontage to be 26' wide per City Standard Detail R-5.
  - iv. Install handicap ramp at the corner of Mitzi Drive and Ranchero Way project frontage per City Standard Detail R-10.
  - v. Install modified handicap ramp at the southeasterly corner of Mitzi Drive and Ranchero Way. The receiving ramp is required for the proposed handicap ramp along the Mitzi Drive and Ranchero Way project corner.
  - vi. Underground the existing overhead utility wires along the Mitzi Drive and Ranchero Way project frontage.
  - vii. Relocation of the existing street furniture (i.e. utility cabinet, utility pole, etc.) along Mitzi Drive to City Standards. Coordination with the utility company providing service will be required.
  - viii. Developer shall be responsible for adjusting existing utility boxes/vaults to grade along the project frontages.
  - ix. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - x. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- k. **SNI:** This project is located within the Blackford SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
  - l. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - m. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in the park strip along Mitzi Drive and Ranchero Way project frontages. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
33. **Revocation, Suspension, Modification.** This Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Section 20.100.350 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **7<sup>th</sup> of October, 2020.**

Rosalynn Hughey, Director  
Planning, Building, and Code Enforcement

Deputy